

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1841

AN ACT to amend the Indiana Code concerning child support.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 9-24-9-2, AS AMENDED BY P.L.39-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. Each application for a license or permit under this chapter must require the following information:

- (1) The name, age, sex, **Social Security number**, and mailing address and, if different from the mailing address, the residence address of the applicant. The applicant shall indicate to the bureau which address the license or permit shall contain.
- (2) Whether the applicant has been licensed as an operator, a chauffeur, or a public passenger chauffeur or has been the holder of a learner's permit, and if so, when and by what state.
- (3) Whether the applicant's license or permit has ever been suspended or revoked, and if so, the date of and the reason for the suspension or revocation.
- (4) Whether the applicant has been convicted of a crime punishable as a felony under Indiana motor vehicle law or any other felony in the commission of which a motor vehicle was used.
- (5) Whether the applicant has a physical or mental disability, and if so, the nature of the disability and other information the bureau directs.

The bureau shall maintain records of the information provided under

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subdivisions (1) through (5).

SECTION 2. IC 12-17-2-18, AS AMENDED BY P.L.213-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 18. (a) The bureau shall make the agreements necessary for the effective administration of the plan with local governmental officials within Indiana. The bureau shall contract with:

- (1) a prosecuting attorney; or
- (2) a private attorney if the bureau determines that a reasonable contract cannot be entered into with a prosecuting attorney and the determination is approved by at least two-thirds (2/3) of the Indiana child custody and support advisory committee (established under IC 33-2.1-10-1);

in each judicial circuit to undertake activities required to be performed under Title IV-D of the federal Social Security Act (42 U.S.C. 651), including establishment of paternity, establishment, enforcement, and modification of child support orders, activities under the Uniform Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal) or the Uniform Interstate Family Support Act (IC 31-18, or IC 31-1.5 before its repeal), and if the contract is with a prosecuting attorney, prosecutions of welfare fraud.

(b) The hiring of an attorney by an agreement or a contract made under this section is not subject to the approval of the attorney general under IC 4-6-5-3. An agreement or a contract made under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

(c) Subject to section 18.5 of this chapter, a prosecuting attorney with which the bureau contracts under subsection (a) may contract with a private organization to provide child support enforcement services.

(d) A prosecuting attorney or private attorney entering into an agreement or a contract with the bureau under this section enters into an attorney-client relationship with the state to represent the interests of the state in the effective administration of the plan and not the interests of any other person. An attorney-client relationship is not created with any other person by reason of an agreement or contract with the bureau.

(e) At the time that an application for child support services is made, the applicant must be informed that:

- (1) an attorney who provides services for the child support bureau is the attorney for the state and is not providing legal representation to the applicant; and
- (2) communications made by the applicant to the attorney and the advice given by the attorney to the applicant are not confidential communications protected by the privilege

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provided under IC 34-46-3-1.

SECTION 3. IC 12-17-2-33.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 33.1. (a) The bureau shall ~~enter into an agreement with the department of state revenue to~~ operate a data match system with each financial institution doing business in the state.

(b) Each financial institution doing business in the state shall provide information to the ~~department of state revenue~~ **bureau** on all noncustodial parents who:

- (1) hold one (1) or more accounts with the financial institution; and
- (2) are delinquent.

(c) In order to provide the information required under subsection (b), a financial institution shall either:

- (1) identify noncustodial parents by comparing records maintained by the financial institution with records provided by the ~~department of state revenue~~ **bureau** by:

- (A) name; and
- (B) either Social Security number or tax identification number; or

- (2) submit to the ~~department of state revenue~~ **bureau** a report, in a form satisfactory to the ~~department of state revenue~~ **bureau**, that includes the Social Security number or tax identification number of each individual maintaining an account at the financial institution.

(d) The information required under subsection (b) must:

- (1) be provided on a quarterly basis; and
- (2) include the:
 - (A) name;
 - (B) address of record; and
 - (C) either the Social Security number or tax identification number;

of an individual identified under subsection (b).

(e) When the ~~department of state revenue~~ **bureau** has determined that the information required under subsection (d)(2) is identical for an individual who holds an account with a financial institution and an individual whose name appears on the quarterly list prepared by the bureau under section 33 of this chapter, the ~~department of state revenue~~ **bureau** shall provide a notice of the match ~~and the if action is to be taken initiated~~ to block or encumber the account ~~with by establishing~~ a lien for child support payment to the:

- (1) individual; **and**



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(2) financial institution holding the account. ~~and~~

~~(3) bureau.~~

(f) The notice under section (e) must inform the individual that:

(1) the individual's account in a financial institution is subject to a child support lien; and

(2) the individual may file an appeal with the ~~Title IV-D agency~~ **bureau** within twenty (20) days of the date the notice was issued.

(g) The ~~Title IV-D agency~~ **bureau** shall hold a hearing under 470 IAC 1-4. ~~within twenty-five (25) days after an appeal is filed under subsection (f). After a hearing is held under this subsection, an individual who is aggrieved by the decision of the Title IV-D agency may, within thirty (30) days after the decision, file an appeal with the circuit court in the county:~~

~~(1) where the individual resides, if the individual is a resident of the state; and~~

~~(2) in the state where a record of the individual's account is located, if the individual is not a resident of the state;~~

for a trial de novo. The division's final action following a hearing held under this subdivision is subject to judicial review as provided in 470 IAC 1-4.

(h) The state's lien on assets under this section is subordinate to any prior lien perfected by:

(1) a financial institution; or

(2) another legitimate lien holder.

(i) A lien issued under this section remains in effect until the earlier of:

(1) one hundred twenty (120) days after issuance;

(2) the asset on which the lien is issued is surrendered; or

(3) the lien is released by an action of the bureau. ~~or the department of state revenue.~~

(j) This section does not preclude a financial institution from exercising its right to:

(1) charge back or recoup a deposit to an account; or

(2) set off from an account held by the financial institution in which the noncustodial parent has an interest **in** any debts owed to the financial institution that existed before:

(A) the state's lien; and

(B) notification to the financial institution of the child support delinquency.

(k) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is

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blocked or encumbered.

(l) All information provided by a financial institution under this section is confidential, and is available only to

~~(1) the department of state revenue; and~~

~~(2) the office of the secretary; the bureau or its agents~~

for use only in child support enforcement activities.

(m) A financial institution providing information required under this section is not liable for:

(1) disclosing the required information to the bureau; ~~or the department of state revenue;~~

(2) blocking or surrendering any of an individual's assets in response to a lien imposed by:

(A) the bureau ~~or the department of state revenue~~ under this section; or

(B) a person or entity acting on behalf of the bureau; or

(3) any other action taken in good faith to comply with this section.

(n) The division shall pay a financial institution performing the data match required by this section a reasonable fee for providing the service that does not exceed the actual cost incurred by the financial institution.

(o) ~~The division shall pay the department of state revenue a reasonable fee for operating the data match that does not exceed the actual cost incurred by the department of state revenue. This section does not prevent the bureau or its agents from encumbering an obligor's account with a financial institution by any other remedy available for the enforcement of a child support order.~~

SECTION 4. IC 16-37-2-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2.1. (a) A paternity affidavit may be executed as provided in this section through:

(1) a hospital; or

(2) a local health department.

(b) Immediately before or after the birth of a child who is born out of wedlock, a person who attends or plans to attend the birth, including personnel of all public or private birthing hospitals, shall:

(1) provide an opportunity for:

(A) the child's mother; and

(B) a man who reasonably appears to be the child's biological father;

to execute an affidavit acknowledging paternity of the child; and

(2) verbally explain to the individuals listed in subdivision (1) the legal effects of an executed paternity affidavit as described in

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subsection (g).

(c) A paternity affidavit must be executed on a form provided by the state department. The paternity affidavit is valid only if the affidavit is executed as follows:

(1) If executed through a hospital, the paternity affidavit must be completed not more than seventy-two (72) hours after the child's birth.

(2) If executed through a local health department, the paternity affidavit must be completed before the child has reached the age of emancipation.

(d) A paternity affidavit is not valid if it is executed after the mother of the child has executed a consent to adoption of the child and a petition to adopt the child has been filed.

(e) A paternity affidavit executed under this section must contain or be attached to all of the following:

(1) The mother's sworn statement asserting that a person described in subsection (a)(2) is the child's biological father.

(2) A statement by a person identified as the father under subdivision (1) attesting to a belief that he is the child's biological father.

(3) Written information furnished by the division of family and children:

(A) explaining the effect of an executed paternity affidavit as described in subsection (g); and

(B) describing the availability of child support enforcement services.

(4) The Social Security number of each parent.

(f) A woman who knowingly or intentionally falsely names a man as the child's biological father under this section commits a Class A misdemeanor.

(g) A paternity affidavit executed under this section:

(1) establishes paternity; and

(2) gives rise to parental rights and responsibilities of the person described in subsection (e)(2), including the right of the child's mother or the Title IV-D agency to obtain a child support order against the person.

However, if a paternity affidavit is executed under this section, the child's mother has sole legal custody of the child unless another custody determination is made by a court in a proceeding under IC 31-14.

(h) Notwithstanding any other law:

(1) any person listed in IC 31-14-4-1 or IC 31-14-4-3; or

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(2) a man who is a party to a paternity affidavit executed under this section;

may, within sixty (60) days of the date that a paternity affidavit is executed under this section, file an action in a court with jurisdiction over paternity to ~~have the paternity affidavit set aside~~; **request an order for a genetic test.**

(i) A paternity affidavit that is properly executed under this section may not be rescinded more than sixty (60) days after the paternity affidavit is executed ~~except in cases of~~ **unless a court has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit.**

(j) Unless good cause is shown, a court shall not suspend the legal responsibilities under subsection (g)(2) of a party to the executed paternity affidavit during a challenge to the affidavit.

(k) The court shall set aside the paternity affidavit upon a showing from a ~~blood or~~ genetic test that sufficiently demonstrates that the person who executed the paternity affidavit is ~~not excluded as~~ the child's biological father.

(l) If a paternity affidavit is not executed under subsection (b), the hospital where the birth occurs or a person in attendance at the birth shall inform the child's mother of services available for establishing paternity.

SECTION 5. IC 16-37-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The local health officer shall, from the stillbirth and death certificates, make a permanent record of the:

- (1) name;
- (2) sex;
- (3) age;
- (4) place of death;
- (5) residence; and
- (6) for a death certificate only:
 - (A) residence addresses of the deceased during the two (2) years before the death; and**
 - (B) Social Security number;**

of the deceased.

(b) The records shall be open to public inspection, **but the Social Security number is confidential and may not be disclosed to the public.**

(c) The local health officer shall, not later than January 31, April 30, July 31, and October 31 of each year, furnish to the county auditor the records of all deaths within the officer's jurisdiction that occurred



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during the previous three (3) months.

(d) The local health officer may make records of other data in connection with deaths for statistical purposes or for the purpose of planning health programs. Records under this subsection are not public records.

SECTION 6. IC 31-14-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A man is presumed to be a child's biological father if:

(1) the:

(A) man and the child's biological mother are or have been married to each other; and

(B) child is born during the marriage or not later than three hundred (300) days after the marriage is terminated by death, annulment, or dissolution;

(2) the:

(A) man and the child's biological mother attempted to marry each other by a marriage solemnized in apparent compliance with the law, even though the marriage:

(i) is void under IC 31-11-8-2, IC 31-11-8-3, IC 31-11-8-4, or IC 31-11-8-6; or

(ii) is voidable under IC 31-11-9; and

(B) child is born during the attempted marriage or not later than three hundred (300) days after the attempted marriage is terminated by death, annulment, or dissolution; **or**

~~(3) the man executed a paternity affidavit in accordance with IC 16-37-2-2.1; or~~

~~(4)~~ **(3)** the man undergoes a ~~blood~~ **genetic** test that indicates with at least a ninety-nine percent (99%) probability that the man is the child's biological father.

SECTION 7. IC 31-14-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) If there is not a presumed biological father under section 1 **or 1.5** of this chapter, there is a rebuttable presumption that a man is the child's biological father if, with the consent of the child's mother, the man:

(1) receives the child into the man's home; and

(2) openly holds the child out as the man's biological child.

(b) The circumstances under this section do not establish the man's paternity. A man's paternity may only be established as described in IC 31-14-2-1.

SECTION 8. IC 31-14-7-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 3. A man is a child's legal father if the man executed**

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a paternity affidavit in accordance with IC 16-37-2-2.1 and the paternity affidavit has not been rescinded or set aside under IC 16-37-2-2.1.

SECTION 9. IC 31-14-11-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. ~~The party who has been ordered to pay child support~~ **The custodial parent and the noncustodial parent** shall furnish the following information to the clerk of the court at the time of the issuance or modification of a child support order:

- (1) The ~~party's~~ **parent's** Social Security number.
- (2) The name and address of the ~~party's~~ **parent's** employer.

SECTION 10. IC 31-14-17-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. ~~(a) The court shall order the father to pay at least fifty percent (50%) of the reasonable and necessary expenses of the mother's pregnancy and childbirth, including the cost of:~~

- (1) prenatal care;
- (2) delivery;
- (3) hospitalization; and
- (4) postnatal care.

~~(b) If expenses under subsection (a) have been paid by Medicaid, the mother and father are jointly and severally liable to reimburse Medicaid for the expenses.~~

SECTION 11. IC 31-16-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. ~~A party who has been ordered to pay child support~~ **The custodial parent and the noncustodial parent** shall furnish the following information to the clerk of the court at the time of the issuance or modification of a child support order:

- (1) The ~~party's~~ **parent's** Social Security number.
- (2) The name and address of the ~~party's~~ **parent's** employer.

SECTION 12. IC 31-16-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) To activate or implement an income withholding order, in addition to the notice requirements imposed by sections 7 and 8 of this chapter:

- (1) the Title IV-D agency in a case arising under section 3 or 5 of this chapter; or
 - (2) the court in a case arising under section 6 of this chapter;
- shall mail a written notice to each income payor not later than fifteen (15) calendar days after the issuance of the income withholding order.

(b) The notice to each income payor must contain a statement of the following:



- (1) That the income payor is required to withhold a certain amount of income from the obligor.
- (2) That the total amount to be withheld each month by the obligor's income payor from the obligor's income is the sum of:
 - (A) the obligor's current monthly child support obligation;
 - (B) an amount to be applied toward the liquidation of any arrearages; and
 - (C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the clerk of the court;
 up to the maximum amount permitted under 15 U.S.C. 1673(b).
- (3) That the income payor shall:
 - (A) forward the withheld income described in subdivision (2)(A) and (2)(B) to the clerk of the court **or the state central collection unit** named in the notice at the same time that the obligor is paid; and
 - (B) include a statement identifying:
 - (i) each cause number;
 - (ii) **the Indiana support enforcement tracking system (ISETS) case number;**
 - (iii) the name of each obligor; and
 - ~~(iii)~~ (iv) the name of each payee with the withheld income forwarded by the income payor.
- (4) That withholding is binding upon the income payor until further notice.
- (5) That the obligor may recover from the income payor in a civil action an amount not less than one hundred dollars (\$100) if the income payor:
 - (A) discharges the obligor from employment;
 - (B) refuses the obligor employment; or
 - (C) disciplines the obligor;
 because the income payor is required to forward income under this chapter.
- (6) That the income payor is liable for any amount that the income payor fails to forward under this chapter.
- (7) That withholding under this chapter has priority over any secured or unsecured claim on income except claims for federal, state, and local taxes.
- (8) That, if the income payor is required to withhold income from more than one (1) obligor, the income payor may:
 - (A) combine in a single payment the withheld amounts for all obligors who have been ordered to pay the same clerk or other

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governmental agency; and

(B) separately identify the part of the single payment that is attributable to each individual obligor.

(9) That if:

(A) there is more than one (1) order for withholding against a single obligor; and

(B) the obligor has insufficient disposable earnings to pay the amount required by all the orders;

the income payor shall distribute the withheld earnings pro rata among the entities entitled to receive earnings under the orders, giving priority to a current support withholding order, and shall honor all withholdings to the extent that the total amount withheld does not exceed the limits imposed under 15 U.S.C. 1673(b).

(10) That the income payor shall implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

(11) That the income payor shall:

(A) notify:

(i) the Title IV-D agency in a case arising under section 5 of this chapter; or

(ii) the court in a case arising under section 1 or 6 of this chapter;

when the obligor terminates employment or ceases to receive other income not later than ten (10) days after termination; and

(B) provide:

(i) the obligor's last known address; and

(ii) the name and address of the obligor's new income payor if known.

SECTION 13. IC 31-16-15-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) An income payor that is required to withhold income under this chapter shall:

(1) forward income withheld for the payment of current and past due child support to the clerk of the court, **the state central collection unit**, or other person named in the notice at the same time that the obligor is paid;

(2) include a statement identifying:

(A) each cause number;

(B) **the Indiana support enforcement tracking system (ISETS) case number**;

(C) the name of each obligor; and

~~(C)~~ (D) the name of each payee with the withheld income forwarded by the income payor; and

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(3) implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

(b) The income payor may retain, in addition to the amount required to be forwarded to the clerk of court under subsection (a), a fee of two dollars (\$2) from the obligor's income each time the income payor forwards income to the clerk of the court or other person specified in the notice to an income payor under this chapter. If the income payor elects to withhold the fee, the amount to be withheld for the payment of current and past due child support must be reduced accordingly if necessary to avoid exceeding the maximum amount permitted to be withheld under 15 U.S.C. 1673(b).

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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